

Honorable Barbara J. Rothstein

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

KARLA AYLEN, DDS PLLC, individually and  
on behalf of all others similarly situated,

Plaintiff,

v.

ASPEN AMERICAN INSURANCE  
COMPANY,

Defendant.

No. 2:20-cv-00717-BJR

AMENDED COMPLAINT—CLASS  
ACTION

JURY DEMAND

**I. INTRODUCTION**

Plaintiff, KARLA AYLEN, DDS PLLC (“Aylen”), individually and on behalf of all other similarly situated members of the defined national class, and the defined Washington State subclasses (the “Class Members”), by and through the undersigned attorneys, brings this class action against Aspen American Insurance Company (“Aspen” or “Defendant”) and alleges as follows based on personal knowledge and information and belief:

**II. JURISDICTION AND VENUE**

1. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because at least one member of the proposed Class and Washington subclass is a citizen of a state different from that of Defendant, the proposed Class





1           7.     Plaintiff paid all premiums for the coverage when due.

2           8.     On or about January 2020, the United States of America saw its first cases of  
3 persons infected by COVID-19, which has been designated a worldwide pandemic.

4           9.     COVID-19 is a highly contagious virus that rapidly and easily spreads; it  
5 continues to spread across the United States including Washington State. In many infected  
6 persons, the virus causes severe illness and requires hospitalization, including intubation. The  
7 virus has killed at least 200,000 people in the United States to date. Persons who survive the  
8 virus have experienced ongoing cognitive and physical impacts from the virus, even after the  
9 virus is no longer actively detected in their bodies.

10           10.    The virus is a physical substance that spreads person to person through respiratory  
11 droplets produced when an infected person breaths, talks, coughs or sneezes. It also spreads  
12 when virus respiratory droplets are exhaled and aerosolized, and deposited on a surface or object  
13 (e.g., furniture, dentistry instruments, tables, door knobs, chairs, touch screens) and those objects  
14 are then touched by another person who then touches their own mouth, nose or eyes. COVID-19  
15 is caused by a novel (new) coronavirus that has not previously been seen in humans.<sup>1</sup>

16           11.    COVID-19 remains stable and transmittable in aerosols for up to three hours and  
17 up to two or three days on surfaces. Persons infected with COVID-19 can be asymptomatic yet  
18 will still spread the virus. Guidance issued by the United States Centers for Disease Control &  
19 Prevention (CDC) recommends avoiding indoor activities, adhering to strict sanitation protocols,  
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<sup>1</sup> See, e.g., *Coronavirus Disease 2019 (COVID-19):Frequently Asked Questions* (updated Sept. 18, 2020),  
<https://www.cdc.gov/coronavirus/2019-ncov/faq.html>.

1 and maintaining social distance of at least six feet from others in order to minimize the spread of  
2 COVID-19.<sup>2</sup>

3 12. The CDC also recognizes that “dental settings have unique characteristics that  
4 warrant specific infection control considerations,” and that the most critical dental services must  
5 be prioritized in a way that minimizes harm to patients from delaying care while minimizing  
6 harm to personnel and patients from potential exposure to COVID-19 infection.<sup>3</sup>

7  
8 13. In March 2020, the American Dental Association (“ADA”) recommended that  
9 dental providers close their offices for all but emergency care.<sup>4</sup> Upon expiration of that guideline  
10 in April 2020, the ADA recommended that dental providers keep their offices closed to all but  
11 urgent and emergency procedures.<sup>5</sup>

12 14. As of September 19, 2020, at least 82,548 persons in Washington State have  
13 tested positive for COVID-19; 7,262 have been hospitalized, and 2,037 have died due to the  
14 COVID-19 virus.

15 15. As of September 20, 2020, at least 21,459 persons in King County alone have  
16 tested positive for COVID-19; 2,313 have been hospitalized, and over 750 have died due to the  
17 COVID-19 virus.  
18  
19  
20

21 <sup>2</sup> *Coronavirus Disease 2019 (COVID-19): Personal and Social Activities*, Centers for Disease Control & Prevention  
22 (updated Sept. 11, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/personal-social-activities.html>.

23 <sup>3</sup> *Coronavirus Disease 2019 (COVID-19): Guidance for Dental Settings*, Centers for Disease Control & Prevention  
24 (updated August 28, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/hcp/dental-settings.html>

25 <sup>4</sup> American Dental Association press room releases: <https://www.ada.org/en/press-room/news-releases/2020-archives/march/ada-calls-upon-dentists-to-postpone-elective-procedures> (last visited September 24, 2020).

26 <sup>5</sup> American Dental Association press room releases: <https://www.ada.org/en/press-room/news-releases/2020-archives/april/summary-of-ada-guidance-during-the-covid-19-crisis> (last visited September 24, 2020).

1           16.     The percentage of positive results returned from COVID-19 testing conducted in  
 2 King County between March and April, 2020 rose above 10% for extended periods during that  
 3 window. King County's testing positivity rates dropped briefly in mid-June, 2020, and rose  
 4 steadily again at the end of June through August, 2020.<sup>6</sup> In the second half of September, 2020,  
 5 cases appear to be on the rise again.

6           17.     Public health data throughout the United States, and on a state-by-state basis,  
 7 shows that COVID-19 has been detected in every state.

8           18.     Public health data throughout the United States shows the rate of positive testing  
 9 by state, the numbers of persons by state who have been diagnosed with COVID-19, the number  
 10 of persons hospitalized due to COVID-19, the number of deaths from COVID-19, and other  
 11 related statistics.<sup>7</sup>

12           19.     The presence of any COVID-19 aerosolized or suspended droplets or particles in  
 13 the air or otherwise circulating in an indoor environment renders that physical space, or physical  
 14 property, unsafe and unusable.

15           20.     The presence of any COVID-19 aerosolized or suspended droplets or particles in  
 16 the air or otherwise circulating in an indoor environment causes direct physical damage to  
 17 property and direct physical loss of property.

18           21.     The presence of any COVID-19 droplets or particles on physical surfaces renders  
 19 items of physical property unsafe and unusable.

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 22  
 23  
 24 <sup>6</sup> Total Counts by Date For All King County (Sept. 14, 2020), <https://www.kingcounty.gov/depts/health/covid-19/data/daily-summary.aspx> (data file download).

25 <sup>7</sup> See, e.g., The New York Times, Covid in the U.S.: Latest Map and Case Count (reflecting COVID-19 statistics, on  
 26 a state-by-state, county-by-county, and aggregated basis since March 2020),  
<https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html?action=click&module=Top%20Stories&pgtype=Homepage> (last visited Sept. 23, 2020).

1           22.     The presence of any COVID-19 droplets or particles on physical surfaces causes  
2 direct physical damage to property and direct physical loss of property.

3           23.     The presence of people infected with or carrying COVID-19 particles at premises  
4 renders the premises, including property located at that premises, unsafe and unusable, resulting  
5 in direct physical damage and direct physical loss to the premises and property.  
6

7           24.     Loss of functionality of property that has not been physically altered constitutes  
8 direct physical loss of property and/or direct physical damage to property.

9           25.     On February 29, 2020, Washington Governor Jay Inslee issued Proclamation 20-  
10 5, declaring a State of Emergency for all counties in the State of Washington as a result of the  
11 COVID-19 outbreak. Thereafter, he issued a series of proclamations and orders affecting many  
12 persons and businesses in Washington, whether infected with COVID-19 or not, requiring  
13 certain public health precautions.  
14

15           26.     On March 19, 2020, Governor Inslee issued a “PROCLAMATION BY THE  
16 GOVERNOR AMENDING PROCLAMATION 20-05: 20-24 Restrictions on Non Urgent  
17 Medical Procedures,” which prohibited dental practitioners from providing dental services but  
18 for urgent and emergency procedures:

19           WHEREAS, the health care person protective equipment supply chain in  
20 Washington State has been severely disrupted by the significant increased use of  
21 such equipment worldwide, such that there are now critical shortages of this  
22 equipment for health care workers. To curtail the spread of the COVID-19  
23 pandemic in Washington State and to protect our health care workers as they  
24 provide health care services, it is necessary to immediately prohibit all hospitals,  
25 ambulatory surgery centers, and dental orthodontic, and endodontic offices in  
26 Washington State from providing health care services, procedures and surgeries  
that require personal protective equipment, which if delayed, are not anticipated  
to cause harm to the patient within the next three months.

27           27.     Proclamation 20-24 provides that one of the reasons it was issued was that “the  
worldwide COVID-19 pandemic and its progression throughout Washington State continues to  
AMENDED COMPLAINT—CLASS ACTION - 7

(2:20-cv-00717-BJR)

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1 threaten the life and health of our people as well as the economy of Washington State, and  
2 remains a public disaster affecting life, health, property or the public peace.”

3 28. On information and belief, Proclamation 20-24 refers to the health of  
4 Washingtonians and property damage throughout Washington State, including King County  
5 where Plaintiff’s business is located.  
6

7 29. On March 23, 2020, Mr. John Weisman, Secretary of Washington State’s  
8 Department of Health, issued a list of directives and orders regarding healthcare matters and  
9 mandated that all healthcare practitioners, including dental practitioners, cease all elective and  
10 non-urgent medical procedures and appointments as of the close of business on March 24, 2000,  
11 and throughout the duration of the catastrophic health emergency.  
12

13 30. On March 25, 2020, the Washington State Dental Association recommended that  
14 all dental practices follow the mandates and orders of the Washington Department of Health and  
15 postpone all non-emergency or non-urgent dental procedures throughout the duration of the  
16 catastrophic health emergency.

17 31. On March 30, 2020, Governor Inslee issued Order Number 20-03-30-01 affecting  
18 persons and residents within the State of Washington, which includes a “Stay-at-Home Order”  
19 requiring all persons living in Washington to stay in their homes or places of residences except  
20 under certain specified circumstances.  
21

22 32. Governor’s Inslee’s Proclamations and Orders related to COVID-19 have been  
23 extended and modified from time to time.

24 33. Governors and civil authorities in other states have issued similar orders and  
25 proclamations, for similar reasons.  
26



1           34. Loss caused by COVID-19 and/or Governor Inslee's orders and proclamations,  
2 rendered Plaintiff's property unusable for its intended and insured purpose.

3           35. Plaintiff's property sustained direct physical loss and/or direct physical property  
4 damage related to COVID-19, and/or the proclamations and orders.

5           36. Plaintiff's property will continue to sustain direct physical loss or damage covered  
6 by the Aspen policy or policies, including but not limited to practice coverage interruption, extra  
7 expense, interruption by civil authority, and other expenses.

8           37. Plaintiff has been unable to use her physical property for its intended business  
9 purposes.  
10

11           38. As a result of the above, Plaintiff has experienced and will experience loss  
12 covered by the Aspen policy or policies.  
13

14           39. Plaintiff complied with all requirements in the Aspen policy or policies.

15           40. Plaintiff contacted her insurance agent in or about March 2020 to submit a claim  
16 for losses covered by the Aspen Policy.

17           41. On or about May 5, Aspen through its agent told Plaintiff by voicemail message  
18 that Aspen "had determined that their policies do not provide coverage for business interruption  
19 arising out of the [sic] COVID-19 and they will send letters out to the policyholders to confirm."  
20

21           42. Aspen did not conduct any investigation into Plaintiff's loss.

22           43. Aspen denied Plaintiff's claim based on its internal policy to deny business  
23 interruption claims related to COVID-19.

24           44. Aspen's denial of Plaintiff's claim was not based on any factor unique or  
25 particular to Plaintiff.  
26

1           45. Upon information and belief, Aspen has denied and will deny coverage to other  
 2 similarly situated policyholders based on its policy to deny business interruption claims related  
 3 to COVID-19.

#### 4                                   V. CLASS ACTION ALLEGATIONS

5           46. This matter is brought by Plaintiff on behalf of itself and those similarly situated,  
 6 under Federal Rules of Civil Procedure 23(b)(1), 23(b)(2), and 23(b)(3).

7           47. The Classes and Subclasses that Plaintiff seeks to represent are defined as:

8                   A. ***Practice Income Breach of Contract Class:*** All persons and entities in the  
 9 United States issued an Aspen policy with Practice Income Coverage who suffered a  
 10 suspension of their practice at the covered premises related to COVID-19 and/or orders  
 11 issued by Governor Inslee, other Governors, and/or other civil authorities and whose  
 12 Practice Income claim has been denied by Aspen.  
 13  
 14

15                   B. ***Practice Income Breach of Contract Washington Subclass:*** All persons  
 16 and entities in the State of Washington issued an Aspen policy with Practice Income  
 17 Coverage who suffered a suspension of their practice at the covered premises related to  
 18 COVID-19 and/or orders issued by Governor Inslee, and/or other civil authorities and  
 19 whose Practice Income claim has been denied by Aspen.  
 20

21                   C. ***Practice Income Declaratory Relief Class:*** All persons and entities in the  
 22 United States issued an Aspen policy with Practice Income Coverage who suffered a  
 23 suspension of their practice at the covered premises related to COVID-19 and/or orders  
 24 issued by Governor Inslee, other Governors, and/or other civil authorities.

25                   D. ***Practice Income Declaratory Relief Washington Subclass:*** All persons  
 26 and entities in the State of Washington issued an Aspen policy with Practice Income

1 Coverage who suffered a suspension of their practice at the covered premises related to  
2 COVID-19 and/or orders issued by Governor Inslee, and/or other civil authorities.

3 E. ***Extra Expense Breach of Contract Class:*** All persons and entities in the  
4 United States issued an Aspen policy with Extra Expense Coverage who incurred  
5 expenses while seeking to minimize the suspension of business at the covered premises in  
6 connection with COVID-19 and/or orders issued by Governor Inslee, other Governors,  
7 and/or other civil authorities and whose Extra Expense claim has been denied by Aspen.  
8

9 F. ***Extra Expense Breach of Contract Washington Subclass:*** All persons  
10 and entities in the State of Washington issued an Aspen policy with Extra Expense  
11 Coverage who incurred expenses while seeking to minimize the suspension of business at  
12 the covered premises in connection with COVID-19 and/or orders issued by Governor  
13 Inslee, and/or other civil authorities and whose Extra Expense claim has been denied by  
14 Aspen.  
15

16 G. ***Extra Expense Declaratory Relief Class:*** All persons and entities in the  
17 United States issued an Aspen policy with Extra Expense Coverage who incurred  
18 expenses while seeking to minimize the suspension of business at the covered premises in  
19 connection with COVID-19 and/or orders issued by Governor Inslee, other Governors,  
20 and/or other civil authorities.  
21

22 H. ***Extra Expense Declaratory Relief Washington Subclass:*** All persons and  
23 entities in the State of Washington issued an Aspen policy with Extra Expense Coverage  
24 who incurred expenses while seeking to minimize the suspension of business at the  
25 covered premises in connection with COVID-19 and/or orders issued by Governor Inslee,  
26 and/or other civil authorities.

1           I.       ***Extended Practice Income Breach of Contract Class:*** All persons and  
 2 entities in the United States issued an Aspen policy with Extended Practice Income  
 3 Coverage who suffered a suspension of their practice at the covered premises related to  
 4 COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or other civil  
 5 authorities and whose Extended Practice Income claim has been denied by Aspen.  
 6

7           J.       ***Extended Practice Income Breach of Contract Washington Subclass:***  
 8 All persons and entities in the State of Washington issued an Aspen policy with Extended  
 9 Practice Income Coverage who suffered a suspension of their practice at the covered  
 10 premises related to COVID-19 and/or orders issued by Governor Inslee, and/or other civil  
 11 authorities and whose Extended Practice Income claim has been denied by Aspen.  
 12

13           K.       ***Extended Practice Income Declaratory Relief Class:*** All persons and  
 14 entities in the United States issued an Aspen policy with Extended Practice Income  
 15 Coverage who suffered a suspension of their practice at the covered premises related to  
 16 COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or other civil  
 17 authorities.  
 18

19           L.       ***Extended Practice Income Declaratory Relief Washington Subclass:*** All  
 20 persons and entities in the State of Washington issued an Aspen policy with Extended  
 21 Practice Income Coverage who suffered a suspension of their practice at the covered  
 22 premises related to COVID-19 and/or orders issued by Governor Inslee, and/or other civil  
 23 authorities.  
 24

25           M.       ***Civil Authority Breach of Contract Class:*** All persons and entities in the  
 26 United States issued an Aspen policy with Civil Authority Coverage who suffered a  
 suspension of their practice at the covered premises related to the impact of COVID-19

1 and/or orders issued by Governor Inslee, other Governors, and/or other civil authorities  
 2 and whose Civil Authority claim has been denied by Aspen.

3 N. ***Civil Authority Breach of Contract Washington Subclass:*** All persons  
 4 and entities in the State of Washington issued an Aspen policy with Civil Authority  
 5 Coverage who suffered a suspension of their practice at the covered premises related to  
 6 the impact of COVID-19 and/or orders issued by Governor Inslee, and/or other civil  
 7 authorities and whose Civil Authority claim has been denied by Aspen.  
 8

9 O. ***Civil Authority Declaratory Relief Class:*** All persons and entities in the  
 10 United States issued an Aspen policy with Civil Authority Coverage who suffered a  
 11 suspension of their practice at the covered premises related to COVID-19 and/or orders  
 12 issued by Governor Inslee, other Governors, and/or other civil authorities.  
 13

14 P. ***Civil Authority Declaratory Relief Washington Subclass:*** All persons and  
 15 entities in the State of Washington issued an Aspen policy with Civil Authority Coverage  
 16 who suffered a suspension of their practice at the covered premises related to COVID-19  
 17 and/or orders issued by Governor Inslee, and/or other civil authorities.  
 18

19 48. Excluded from the Class are Defendant's officers, directors, and employees; the  
 20 judicial officers and associated court staff assigned to this case; and the immediate family  
 21 members of such officers and staff. Plaintiff Aylen reserves the right to amend the Class  
 22 definition based on information obtained in discovery.

23 49. This action may properly be maintained on behalf of each proposed Class under  
 24 the criteria of Rule 23 of the Federal Rules of Civil Procedure.

25 50. **Numerosity:** The members of the Class are so numerous that joinder of all  
 26 members would be impractical. Plaintiff is informed and believes that each proposed Class and

1 Subclass contains hundreds of members. The precise number of class members can be  
2 ascertained through discovery, which will include Defendant's records of policyholders.

3 51. **Commonality and Predominance:** Common questions of law and fact  
4 predominate over any questions affecting only individual members of the Class. Common  
5 questions include, but are not limited to, the following:  
6

7 A. Whether the class members suffered covered losses based on common  
8 policies issued to members of the Class and Subclass;

9 B. Whether Aspen acted in a manner common to the Class and Subclass  
10 wrongfully denied claims for coverage relating to COVID-19 and/or orders issued by  
11 Governor Inslee, other Governors, and/or other civil authorities;

12 C. Whether Practice Income Coverage in Aspen's policies of insurance  
13 applies to a suspension of practice relating to COVID-19 and/or orders issued by  
14 Governor Inslee, other Governors, and/or other civil authorities;

15 D. Whether Extra Expense Coverage in Aspen's policies of insurance applies  
16 to efforts to minimize a loss relating to COVID-19 and/or orders issued by Governor  
17 Inslee, other Governors, and/or other civil authorities;

18 E. Whether Extended Practice Income Coverage in Aspen's policies of  
19 insurance applies to a suspension of practice relating to COVID-19 and/or orders issued  
20 by Governor Inslee, other Governors, and/or civil authorities;

21 F. Whether Civil Authority Coverage in Aspen's policies of insurance  
22 applies to a suspension of practice relating to COVID-19 and/or orders issued by  
23 Governor Inslee, other Governors, and/or civil authorities;  
24  
25  
26

1 G. Whether Aspen has breached its contracts of insurance through a blanket  
2 denial of all claims based on business interruption, income loss or closures related to  
3 COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or other civil  
4 authorities;

5 H. Whether, because of Defendant's conduct, Plaintiff and the class members  
6 have suffered damages; and if so, the appropriate amount thereof; and  
7

8 I. Whether, because of Defendant's conduct, Plaintiff and the class members  
9 are entitled to equitable and declaratory relief, and if so, the nature of such relief.

10 52. **Typicality:** Plaintiff's claims are typical of the claims of the members of the  
11 classes. Plaintiff and all the members of the classes have been injured by the same wrongful  
12 practices of Defendant. Plaintiff's claims arise from the same practices and course of conduct  
13 that give rise to the claims of the members of the Class and are based on the same legal theories.  
14

15 53. **Adequacy:** Plaintiff will fully and adequately assert and protect the interests of  
16 the classes and has retained class counsel who are experienced and qualified in prosecuting class  
17 actions. Neither Plaintiff nor its attorneys have any interests contrary to or in conflict with the  
18 Class.

19 54. **Federal Rule of Civil Procedure 23(b)(1), the Risk of Inconsistent or Varying**  
20 **Adjudications and Impairment to Other Class Members' Interests:** Plaintiff seeks  
21 adjudication as to the interpretation, and resultant scope, of Defendant's policies, which are  
22 common to all members of the class. The prosecution of separate actions by individual members  
23 of the classes would risk inconsistent or varying interpretations of those policy terms and create  
24 inconsistent standards of conduct for Defendant. The policy interpretations sought by Plaintiff  
25 could also impair the ability of absent class members to protect their interests.  
26

1           55.     **Federal Rule of Civil Procedure 23(b)(2), Declaratory and Injunctive Relief:**  
 2 Defendant acted or refused to act on grounds generally applicable to Plaintiff and other members  
 3 of the proposed classes making injunctive relief and declaratory relief appropriate on a classwide  
 4 basis.

5           56.     **Federal Rule of Civil Procedure 23(b)(3), Superiority:** A class action is  
 6 superior to all other available methods of the fair and efficient adjudication of this lawsuit. While  
 7 the aggregate damages sustained by the classes are likely to be in the millions of dollars, the  
 8 individual damages incurred by each class member may be too small to warrant the expense of  
 9 individual suits. Individual litigation creates a risk of inconsistent and/or contradictory decisions  
 10 and the court system would be unduly burdened by individual litigation of such cases. A class  
 11 action would result in a unified adjudication, with the benefits of economies of scale and  
 12 supervision by a single court.  
 13  
 14

## 15                                   VI.     CAUSES OF ACTION

### 16                                   Count One—Declaratory Judgment

17           *(Brought on behalf of the Practice Income Coverage Declaratory Relief Class, Practice*  
 18 *Income Coverage Declaratory Relief Washington Subclass, Extra Expense Declaratory Relief*  
 19 *Class, Extra Expense Declaratory Relief Washington Subclass, Extended Practice Income*  
 20 *Declaratory Relief Class, Extended Practice Income Declaratory Relief Washington Subclass,*  
 21 *Civil Authority Relief Class, and Civil Authority Relief Washington Subclass)*

22           57.     Previous paragraphs alleged are incorporated herein.

23           58.     This is a cause of action for declaratory judgment pursuant to the Declaratory  
 24 Judgment Act, codified at 28 U.S.C. § 2201.

25           59.     Plaintiff Aylen brings this cause of action on behalf of the Practice Income  
 26 Coverage Declaratory Relief Class, Practice Income Declaratory Washington Subclass, Extra  
 Expense Declaratory Relief Class, Extra Expense Declaratory Relief Washington Subclass



1 Extended Practice Income Declaratory Relief Class, Extended Practice Income Declaratory  
 2 Relief Washington Subclass, Civil Authority Declaratory Relief Class, and Civil Authority  
 3 Declaratory Relief Washington Subclass.

4 60. Plaintiff Aylen seeks a declaratory judgment declaring that Plaintiff Aylen's and  
 5 class members' losses and expenses resulting from the interruption of their business are covered  
 6 by the Policy.  
 7

8 61. Plaintiff Aylen seeks a declaratory judgment declaring that Aspen is responsible  
 9 for timely and fully paying all such claims.

10 **Count Two—Breach of Contract**

11 *(Brought on behalf of the Practice Income Coverage Breach of Contract Class,*  
 12 *Practice Income Coverage Breach of Contract Washington Subclass, Extra Expense Breach*  
 13 *of Contract Class, Extra Expense Breach of Contract Washington Subclass, Extended*  
 14 *Practice Income Breach of Contract Class, Extended Practice Income Breach of Contract*  
 15 *Washington Subclasses, Civil Authority Breach of Contract Class, and Civil Authority Breach*  
 16 *of Contract Washington Subclass)*

17 62. Previous paragraphs alleged are incorporated herein.

18 63. Plaintiff Aylen brings this cause of action on behalf of the Practice Income  
 19 Coverage Breach of Contract Class, Practice Income Breach of Contract Washington Subclass,  
 20 Extra Expense Breach of Contract Class, Extra Expense Breach of Contract Washington  
 21 Subclass, Extended Practice Income Breach of Contract Class, Extended Practice Income Breach  
 22 of Contract Washington Subclass, Civil Authority Breach of Contract Class, and Civil Authority  
 23 Breach of Contract Washington Subclass.

24 64. The Policy is a contract under which Plaintiff Aylen and the class paid premiums  
 25 to Aspen in exchange for Aspen's promise to pay Plaintiff Aylen and the class for all claims  
 26 covered by the Policy.

65. Plaintiff Aylen has paid its insurance premiums.

1           66. Plaintiff Aylen has been denied coverage for its losses covered by the Aspen  
2 policy.

3           67. Upon information and belief, Aspen has denied, and will continue to deny  
4 coverage for other similarly situated policyholders.

5           68. Denying coverage for the claim is a breach of the insurance contract.

6           69. Plaintiff Aylen is harmed by the breach of the insurance contract by Aspen.  
7

8                           **VII. PRAYER FOR RELIEF**

9           1. Class action status under Fed. R. Civ. P. 23.

10          2. A declaratory judgment that the policy or policies cover the plaintiff's losses and  
11 expenses resulting from the interruption of the Plaintiff's business by COVID-19 and/or orders  
12 issued by Governor Inslee, other Governors, and/or other authorities.

13          3. A declaratory judgment that the defendant is responsible for timely and fully  
14 paying all such losses.

15          4. Damages.

16          5. Pre-judgment interest at the highest allowable rate.

17          6. Reasonable attorney fees and costs.

18          7. Such further and other relief as the Court shall deem appropriate.  
19

20                           **VIII. JURY DEMAND**

21          Plaintiff demands a jury trial on all claims so triable.  
22  
23  
24  
25  
26

DATED this 24th day of September, 2020.

KELLER ROHRBACK L.L.P.

By: s/ Amy Williams-Derry

By: s/ Lynn L. Sarko

By: s/ Ian S. Birk

By: s/ Gretchen Freeman Cappio

By: s/ Irene M. Hecht

By: s/ Karin B. Swope

By: s/ Maureen Falecki

By: s/ Nathan L. Nanfelt

Amy Williams-Derry, WSBA #28711

Lynn L. Sarko, WSBA #16569

Ian S. Birk, WSBA #31431

Gretchen Freeman Cappio, WSBA #29576

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**CERTIFICATE OF SERVICE**

I certify that on 24th day of September, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notice of such filing to all known counsel of record.

By: s/ Amy Williams-Derry  
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